

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

SCOTT E. STASSEN,)	
)	
Plaintiff,)	
)	
v.)	No. 00 C 1956
)	
THE VILLAGE OF ARLINGTON)	
HEIGHTS and SERGEANT)	
RICHARD KAPPLEMAN,)	
)	
Defendants.)	

COURT'S FINAL JURY INSTRUCTIONS

Dated: January 11, 2002

Members of the jury, you have seen and heard all of the evidence and the arguments of the attorneys. Now I will instruct you on the law that applies to this case.

You have two duties as a jury. Your first duty is to decide the facts from the evidence in this case. This is your job, and yours alone.

Your second duty is to apply the law that I give you to the facts. You must follow these instructions, even if you disagree with them. Each of the instructions is important, and you must follow all of them.

You must perform your duties fairly and impartially. In deciding your verdict, you must not allow sympathy, bias, prejudice, fear, or public opinion to influence you. The parties to this case and the public expect that you will carefully and impartially consider all of the evidence in the case, follow the law that I give you, and reach a just verdict regardless of the consequences.

Nothing I say now, and nothing I said or did during the trial, is meant to indicate any opinion on my part about what the facts are or about what your verdict should be. It is not my function to determine the facts in this case. That function belongs to you.

Any notes that you have taken during this trial are only aids to your memory. If your memory differs from your notes, you should rely on your memory and not on the notes. The notes are not evidence. If you have not taken notes, you should rely upon your independent recollection of the evidence and should not be unduly influenced by the notes of other jurors. Notes are not entitled to any greater weight than the recollection or impression of each juror about the testimony.

You should consider and decide this case as an action between persons of equal standing in the community, and holding the same or similar stations in life. Each party is entitled to the same fair consideration. All persons stand equal before the law and are to be dealt with as equals in a court of justice.

It is your duty to determine the facts of this case. In determining the facts, you must consider only the evidence that I have admitted in the case. The evidence consists of the testimony of the witnesses, testimony that was read to you from depositions, and exhibits admitted in evidence.

Some evidence has been admitted for a limited purpose only. When I instructed you that the item of evidence was admitted for a limited purpose, you must consider it only for that limited purpose and for no other.

Certain things are not evidence. I will list them for you.

First, testimony that I struck from the record, or that I told you to disregard, is not evidence and must not be considered.

Second, anything that you may have seen or heard outside the courtroom is not evidence and must be entirely disregarded.

Third, questions and objections by the lawyers are not evidence. Attorneys have a duty to object when they believe a question is improper. You should not be influenced by any objection or by my ruling on it.

Fourth, the lawyers' statements and arguments to you are not evidence. The purposes of these statements and arguments is to discuss the issues and the evidence. If the evidence as you remember it is different from what the lawyers said, your memory is what counts.

You are to consider all of the evidence in determining your verdict. However, that does not mean that you must accept all of the evidence as true or accurate.

You should use common sense in considering the evidence, and you should consider the evidence in light of your own observations in life.

In our lives, we often look at one fact and conclude from that fact that another fact exists. In law we call this an “inference.” You are allowed to make reasonable inferences. Any inferences that you make must be reasonable and must be based on the evidence in the case.

Some of you may have heard the phrases “direct evidence” and “circumstantial evidence.” Direct evidence is direct proof of a fact, such as testimony by a witness about what that witness personally saw or heard or did. Circumstantial evidence is indirect evidence, in other words it is proof of one or more facts that point to the existence or non-existence of another fact. You are to consider both direct and circumstantial evidence. The law allows you to give equal weight to both types of evidence, but it is up to you to decide how much weight to give to any evidence in the case.

In determining the facts in this case, you may have to decide which testimony to believe and which testimony not to believe. You may believe everything a witness says, or part of it, or none of it. You will also have to decide what weight, if any, to give to the testimony of each witness.

In considering the testimony of any witness, you may take into account:

- the opportunity and ability of the witness to see or hear or know the things that the witness testified about;
- the witness's memory;
- the witness's intelligence;
- any interest the witness may have in the outcome of the case, and any bias or prejudice the witness may have;
- the witness's manner while testifying;
- the reasonableness of the witness's testimony in light of all the evidence in the case; and
- any other factors that bear on believability.

The weight of the evidence as to a particular fact does not necessarily depend on the number of witnesses who testify. You may find the testimony of a smaller number of witnesses to be more persuasive than that of a greater number.

A witness may be discredited or “impeached” by contradictory evidence, by, among other things, a showing that he or she testified falsely concerning a material matter, or by evidence that at some other time the witness has said or done something, or has failed to say or do something, that is inconsistent with the witness’ testimony.

If you believe that any witness has been impeached, then you must determine whether to believe the witness’s testimony in whole, in part, or not at all, and how much weight to give to that testimony.

Attorneys have the right to interview witnesses for the purpose of learning what testimony the witnesses will give, and they have the right to meet with their clients to discuss the testimony the clients will give at trial. It is common for attorneys to meet with witnesses prior to their testimony. The fact that a witness or a party has talked to an attorney does not, by itself, reflect adversely on the credibility of the witness or party.

During the trial, certain testimony was presented to you by the reading of a deposition. Deposition testimony is entitled to the same consideration as testimony that was given in court. You are to judge its truthfulness and accuracy, and you are to weigh and consider it, insofar as possible, in the same way as if the witness had been present and testified from the witness stand.

The law does not require any party to call as witnesses all persons who may have been present at any time or place involved in the case, or who may appear to have some knowledge of the matters in issue at this trial. Nor does the law require any party to produce as exhibits all papers and things mentioned in the evidence in the case.

The Claims

Plaintiff Scott Stassen has made three claims in this case. First, Stassen claims that defendant Richard Kappleman used excessive force against him when he searched him before letting him see his client.

Second, Stassen claims that Kappleman committed battery against him in the course of their encounter at the police station.

Third, Stassen claims that Kappleman committed an assault against him in the course of their encounter at the police station.

Kappleman admits that he searched Stassen but denies that he used excessive force in doing so. Kappleman denies the other claims as well.

In addition to these claims, Stassen claims that the Village of Arlington Heights is liable for the battery and assault committed by Kappleman. The Village denies that it is liable to Stassen.

In a civil lawsuit like this one, the burden is on the plaintiff, Scott Stassen, to prove every essential element of his claim by a “preponderance of the evidence.”

A preponderance of the evidence simply means evidence that persuades you that the plaintiff’s claim is more likely true than not true.

In deciding whether any fact has been proved by a preponderance of the evidence, you may, unless otherwise instructed, consider the testimony of all the witnesses, regardless of who may have called them, and all the exhibits received in evidence, regardless of who may have produced them.

If the proof establishes each essential element of Stassen’s claim by a preponderance of the evidence, then you should find for him as to that claim.

If the proof fails to establish any essential element of Stassen’s claim by a preponderance of the evidence, then you should find for the defendant or defendants as to that claim.

Plaintiff's First Claim (Excessive Force) - Elements

For Stassen to prevail on his excessive force claim against Kappleman, he must prove the following elements by a preponderance of the evidence:

1. That Kappleman intentionally used force against Stassen when searching him;
2. That the force Kappleman used exceeded the degree of force that a reasonable officer would have used under the circumstances; and
3. That, as a direct result of Kappleman's force, Stassen suffered some harm.

The reasonableness of a particular use of force must be judged from the perspective of a reasonable officer on the scene, without the benefit of 20/20 hindsight. This reasonableness inquiry is an objective one: the question is whether the officer's actions are objectively reasonable in light of the facts and circumstances confronting him, without regard to his underlying intent or motivation.

If you find from your consideration of all of the evidence that each of these propositions has been proved by a preponderance of the evidence, then you must find in favor of Stassen and against Kappleman.

If, on the other hand, you find from your consideration of all of the evidence that any one of these propositions has not been proved by a preponderance of the evidence, then you must find in favor of Kappleman and against Stassen.

Plaintiff's Second Claim (Battery) - Elements

For Stassen to prevail on his battery claim against Kappleman, he must prove each of the following elements by a preponderance of the evidence:

1. That Kappleman committed an intentional act or acts, without legal justification, that resulted in the harmful or offensive touching of Stassen's person; and
2. That, as a direct result of Kappleman's acts, Stassen suffered some harm.

On the issue of "legal justification," you are instructed that Kappleman was entitled to conduct a search of Stassen, but he was not entitled to conduct a search in a manner intended to provoke, insult or cause bodily harm to Stassen.

If you find from your consideration of all of the evidence that each of these propositions has been proved by a preponderance of the evidence, then you must find in favor of Stassen and against Kappleman.

If, on the other hand, you find from your consideration of all of the evidence that any one of these propositions has not been proved by a preponderance of the evidence, then you must find in favor of Kappleman.

If you find in favor of Stassen and against Kappleman on Stassen's battery claim, then you must also find in favor of Stassen and against the Village of Arlington Heights on this claim.

If, on the other hand, you find in favor of Kappleman and against Stassen on Stassen's battery claim, then you must also find in favor of the Village of Arlington Heights and against Stassen on this claim.

Plaintiff's Third Claim (Assault) - Elements

For Stassen to prevail on his assault claim against Kappleman, he must prove each of the following elements by a preponderance of the evidence:

1. That Kappleman committed an intentional act or acts, without legal justification, that placed Stassen in reasonable apprehension of receiving bodily harm; and

2. That Kappleman's conduct gave the plaintiff a well-founded fear of an imminent battery.

If you find from your consideration of all of the evidence that each of these propositions has been proved by a preponderance of the evidence, then you must find in favor of Stassen and against Kappleman.

If, on the other hand, you find from your consideration of all of the evidence that any one of these propositions has not been proved by a preponderance of the evidence, then you must find in favor of Kappleman and against Stassen.

If you find in favor of Stassen and against Kappleman on Stassen's assault claim, then you must also find in favor of Stassen and against the Village of Arlington Heights on this claim.

If, on the other hand, you find in favor of Kappleman and against Stassen on Stassen's assault claim, then you must also find in favor of the Village of Arlington Heights and against Stassen on this claim.

Damages

If you find in favor of the defendants on Stassen's claims, you will have no occasion to consider the question of damages. If you conclude, however, that Stassen has proved any of his three claims, you must determine what amount of damages, if any, Stassen is entitled to recover. You should not interpret that fact that I am giving instructions about damages as an indication in any way that I believe Stassen should or should not win this case. It is up to you to decide that question. I am instructing you on damages only so that you will have guidance in the event you find in favor of Stassen on any of his claims.

There are two types of damages for you to consider in this case: compensatory damages and punitive damages.

The purpose of compensatory damages is to make the plaintiff whole, that is, to compensate him for the damages he has suffered. If you find in favor of Stassen, you should award him the amount that you find to be justified by a preponderance of the evidence as full, just, and reasonable compensation for all of his damages – no more and no less. Damages must not be based on speculation. On the other hand, compensatory damages are not restricted to actual loss of time or money; they cover both the mental and physical aspects of injury, both tangible and intangible.

You should consider the following elements of damage, to the extent you find them proved by a preponderance of the evidence, and no others:

- Any bodily injury sustained by Stassen. Such injury need not be severe to be compensable; the injury need only be more than negligible.
- Any pain and suffering, disability, and mental anguish that Stassen has experienced since the incident in question;
- Any mental anguish that Stassen is reasonably certain to suffer in the future;
- Any income or earnings that Stassen has lost or will lose as a result of the incident in question.

If you award damages for loss of earnings, you should reduce any award by the amount of expenses that Stassen would have incurred in making those earnings.

If you make an award for loss of future earning, you must reduce it to its present value by considering the interest that Stassen could earn on the amount of the award if he made a relatively risk-free investment. The reason why you must make the present value reduction is because an award of an amount representing future loss of earnings is more valuable to the plaintiff if he receives it today than if he received it in the future, when he would otherwise have earned it. It is more valuable because the

plaintiff can earn interest on it for the period of time between the date of the award and the date he would have earned the money. Thus you should adjust the amount of any award for loss of future earnings by the amount of interest that the plaintiff can earn on that amount in the future.

No evidence of the value of such intangible things as mental or physical pain and suffering need be introduced. In that respect, it is not the value that you are trying to determine, but an amount that will fairly compensate the plaintiff for damages he has suffered. In considering the above elements of damage, you may take into account the nature, extent, and duration of the injury. There is no exact standard for fixing the compensation to be awarded on account of such elements of damage. Any such award should be reasonable, fair, and just in light of the evidence.

In addition to compensatory damages, the law permits the jury, under certain circumstances, to award punitive damages. The purpose of punitive damages is to punish the defendant for his conduct and to serve as an example or warning that will deter others from engaging in such conduct in the future.

In this case, punitive damages may be assessed against Kappleman only. You may award punitive damages if, and only if, Stassen has proved his claim against Kappleman and has also proved by a preponderance of the evidence that Kappleman acted maliciously, wantonly or oppressively.

An act or a failure to act is “maliciously” done if it is prompted or accompanied by ill will, spite, or grudge, either toward the injured person individually or toward all persons in any group or category of which the injured person is a member.

An act or a failure to act is “wantonly” done if it is done in reckless or callous disregard of or in indifference to the rights of another person.

An act or a failure to act is “oppressively” done if done in a way or manner that injures, damages, or otherwise violates the rights of another person with unnecessary harshness or severity, as by misuse or abuse of authority or power, or by taking advantage of some weakness, disability, or misfortune of another person.

If you do decide to award punitive damages, you must use sound reason and calm discretion in reaching that decision and in deciding the amount. Your decision must not be guided by bias, sympathy, or prejudice toward any party. In fixing the amount of punitive damages, you may consider the following factors: (1) the nature of Kappleman’s conduct; (2) the degree of reprehensibility of Kappleman’s conduct; (3) the impact of Kappleman’s conduct on Stassen; (4) the likelihood that Kappleman will repeat the conduct if a punitive award is not made; and (5) the relationship of any award of punitive damages to the amount of any actual harm inflicted on Stassen.

Upon retiring to the jury room, select one of your number as your foreperson. The foreperson will preside over your deliberations and will be your representative here in court.

A form of verdict has been prepared for you.

[Read the verdict form.]

Take this form to the jury room, and when you have reached unanimous agreement on the verdict, your foreperson will fill in and date the form, and each of you will sign it.

I do not anticipate that you will need to communicate with me. If you do, however, the only proper way is in writing, signed by the foreperson, or if he or she is unwilling to do so, by some other juror, and given to the court security officer.

If any communication is made, it should not indicate your numerical division.

The verdict must represent the considered judgment of each juror. Your verdict must be unanimous.

You should make every reasonable effort to reach a verdict. In doing so, you should consult with one another, express your own views, and listen to the views of your fellow jurors. Discuss your differences with an open mind. Do not hesitate to re-examine your own views and change your opinion if you come to believe it is wrong. But you should not surrender your honest beliefs about the weight or effect of evidence solely because of the opinions of your fellow jurors or solely for the purpose of returning an unanimous verdict.

All of you should give fair consideration to all the evidence and deliberate with the goal of reaching a verdict which is consistent with the individual judgment of each juror.

You are impartial judges of the facts. Your sole interest is to determine the truth from the evidence in the case.

VERDICT

We, the jury, unanimously find as to the claims of plaintiff, Scott Stassen, in this case as follows:

(For questions 1 through 3, check one and only one of the two choices)

1. Plaintiff Stassen's Excessive Force Claim Against Defendant Kappleman:

For Plaintiff _____

For Defendant _____

2. Plaintiff Stassen's Battery Claim Against Defendants Kappleman and the Village of Arlington Heights:

For Plaintiff _____

For Defendants _____

3. Plaintiff Stassen's Assault Claim Against Defendants Kappleman and the Village of Arlington Heights:

For Plaintiff _____

For Defendants _____

*If you selected "For Plaintiff" in any of the above questions, proceed to questions 4 and 5.

*If you selected "For Defendant" or "For Defendants" on all three questions, do not answer any more questions.

4. We award the Plaintiff, Scott Stassen, compensatory damages in the amount of:

\$ _____

5. We award the Plaintiff, Scott Stassen, punitive damages against Defendant Richard Kappleman in the amount of:

\$ _____

Foreperson

Date: _____